



**Northern Ireland
Assembly**

**COMMITTEE FOR
AGRICULTURE AND
RURAL DEVELOPMENT**

OFFICIAL REPORT
(Hansard)

**Animal Welfare Bill
Pre-Legislative Scrutiny**

22 September 2009

NORTHERN IRELAND ASSEMBLY

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RURAL DEVELOPMENT**

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Members present for all or part of the proceedings:

Mr Ian Paisley Jnr (Chairperson)
Mr Tom Elliott (Deputy Chairperson)
Mr Thomas Burns
Mr Willie Clarke
Mr William Irwin
Dr William McCrea
Mr Patsy McGlone
Mr George Savage
Mr Jim Shannon

Witnesses:

| | | |
|---------------------|---|---|
| Ms Kate Davey |) | |
| Mr Paddy McGuckian |) | Department of Agriculture and Rural Development |
| Ms Colette McMaster |) | |
| Mr John Terrington |) | |

The Chairperson (Mr Paisley Jnr):

We now move to a presentation from the Department of Agriculture and Rural Development (DARD) on the pre-legislative scrutiny of the draft animal welfare Bill. That represents another major chunk of work that we will have to get down to in this session and the following one. As members know, the draft Bill provides new powers and penalties to deal with new types of offences. It is aimed at preventing cruelty to animals and promoting their welfare.

I welcome Ms Colette McMaster, Ms Kate Davey, Mr Paddy McGuckian and Mr John Terrington from the Department of Agriculture and Rural Development. The Committee has just received a bundle of papers on the proposals for the draft animal welfare Bill. I do not wish to go into those proposals in great detail today, but I want you to give us an overview of the pre-legislative period. Members have been provided with a helpful summary.

Are you taking the lead today, Colette?

Ms Colette McMaster (Department of Agriculture and Rural Development):

I am. We are grateful for the opportunity to address the Committee on the proposed new animal welfare Bill. Beside me is Kate Davey, who has been appointed as head of the new animal welfare Bill team.

The Chairperson:

Should we congratulate you on that?

Ms Kate Davey (Department of Agriculture and Rural Development):

Perhaps you should commiserate.

The Chairperson:

We will wait until the end of the legislative process.

Ms McMaster:

John Terrington, who has been involved in animal welfare policy for a number of years, has been appointed head of the new dog control Bill. Paddy McGuckian is the Department's veterinary adviser on animal welfare issues.

The Chairperson:

You are all very welcome.

Ms McMaster:

Kate and I will deliver the presentation, and John and Paddy will assist with any queries.

You will be aware that it is the Minister's intention, subject to Executive approval, to progress the new animal welfare Bill through to enactment during the lifetime of the current Assembly. Recently, the Minister met the deputy Chairperson and the Committee Clerk to discuss the timescale for the Bill. The timescale for bringing forward the Bill is challenging, but we are committed to working with the Committee to make that achievable. Today is the first of a series of engagements that we plan to have with the Committee and which we hope will be a helpful way to update you and take your views on the Bill as it develops. The purpose of the presentation is to start the engagement on the proposed Bill at an early stage.

I shall cover the need for the new Bill and the aim of the new legislation, and I shall talk about the consultation that has taken place. After that, Kate will outline the proposed new powers that are to be included in the draft Bill, which is covered by the paper that the Department issued to members. I shall then outline the next steps, and we will be happy to take any comments and questions.

The existing animal welfare legislation in Northern Ireland, the Welfare of Animals Act (Northern Ireland) 1972, has been in place for 37 years. It makes provision for the prevention of unnecessary pain and distress for livestock on agricultural land, for the protection of any animal from unnecessary suffering and to regulate specific activities involving animals. It regulates the keeping of pet shops, animal boarding, riding and zoological establishments.

Since the 1972 Act came into force, public awareness has increased that an animal does not suffer solely as a result of physical abuse covered by deliberate acts, cruelty and neglect. Equally, today's society is concerned about the quality of an animal's life and the need for legislation that will provide for an animal's wider welfare needs.

The existing legislation provides powers to deal with cruelty offences when they have happened; it does not provide powers to take action to prevent cruelty from happening. In addition, the existing legislation provides for the regulation of some specific activities involving animals, but it does not address issues that have emerged since 1972 — for example, activities such as dog breeding, circuses and animal sanctuaries.

New animal welfare legislation came into force in Scotland in 2006 and in England and

Wales in 2007. We aim to ensure that the new legislation in Northern Ireland will protect animals here to at least the same level as in Great Britain and that we build on any lessons that have been learned since the primary legislation came into force in GB.

The aims of the new Northern Ireland legislation are to address the gap between the legislative protection that is provided to farmed and non-farmed animals; to strengthen the powers to prevent unnecessary suffering; to introduce new powers and penalties to deal with new types of offences; and to provide enabling powers to regulate, through subordinate legislation, activities involving animals. The benefit of having enabling powers is that the legislation can be updated to deal with issues that emerge or change in the future.

In 2006, the Department consulted on proposals for new animal welfare legislation. That consultation paper outlined the current situation and made proposals for new legislation. It took cognisance of the new legislation that was progressing through Westminster and the Scottish Parliament, which has subsequently come into force.

Proposals were aimed at identifying measures to update and strengthen animal welfare powers — for example, to extend powers to all vertebrates, including farmed and non-farmed animals — and to introduce powers and penalties to deal with new types of offences — for example, to ensure that all activities relating to animal fighting are illegal.

During the formal consultation, which ended in December 2006, the Department received comments from 92 stakeholders and met representative groups to hear their views on the proposals. All respondents supported proposals to bring forward new legislation, and the majority supported many of the specific proposals. A small number of issues received a mixed reaction — for example, a proposal to ban the docking of dogs' tails.

The consultation was carried out under direct rule, and when the Minister took office in 2007, she wanted time to consider fully the issues that were raised. Over the past two years, the Minister and officials met a range of key welfare stakeholders. The Department has also considered submissions from welfare groups and interested individuals on their concerns about the existing animal welfare legislation. To round off the consultation stage before finalising policy proposals, we held a stakeholder workshop with a wide range of animal welfare

stakeholders on Thursday 17 September. The Committee Clerk and Assistant Committee Clerk attended.

The Chairperson:

How did that go, Colette?

Ms McMaster:

That went well. A good range of people attended, and there was general support for the Bill's proposals. Some issues were raised, particularly the ban on docking and giving animals as prizes. Issues were raised about the enforcement of existing powers. We have invited stakeholders to submit further written comments by 25 September. We will take all those comments on board and put them to the Minister before any proposals are finalised. It was a useful day. We will also provide the Committee with details of the comments that were received and subsequent comments that come to us in writing.

Ms Davey:

I wish to outline the proposed new powers that will be included in the new animal welfare Bill. On a small number of occasions, the proposals clarify powers that are already contained in the Welfare of Animals Act (Northern Ireland) 1972. However, I do not plan to outline the powers in the 1972 Act. In practice, the 1972 Act will be repealed and its powers will be re-enacted in the new Bill. Therefore, what we have today will be automatically carried forward.

I will cover the proposed new powers under the following headings: the scope of the Bill; the prevention of harm; the promotion of animal welfare; animals in distress; and enforcement. The summary that members have is laid out in much the same way, so that should be helpful.

I will turn to the scope of the Bill. The policy aim is to protect sentient animals from cruelty and unnecessary suffering. That will be limited to vertebrates. It is also proposed to provide enabling powers to amend, through subordinate legislation, the range of animals covered by the Bill should further scientific evidence prove that to be necessary.

Although all vertebrates will be protected from cruelty and unnecessary suffering, it is proposed that protected animals will be afforded a higher level of protection. Those can be

defined as animals commonly domesticated, under the control of man on a permanent or temporary basis, and not living in a wild state.

Responsibility for an animal will also be clarified. It is proposed that a person who owns an animal will be responsible for it, and/or a person who assumes responsibility for an animal's day-to-day care — for example, in a boarding kennel.

With respect to the proposals for the prevention of harm to animals, the policy aim is to protect any animal from cruelty. Unnecessary suffering is caused in two ways: either by taking a deliberate act to cause unnecessary suffering; or by failing to take steps to prevent unnecessary suffering from occurring. Although it is already an offence to cause cruelty to an animal, whether farmed or non-farmed, the current legislation does not specifically require owners and keepers of non-farmed animals to ensure that all the welfare needs of their animals are met. Given that there is already a requirement for farmed animals under the Welfare of Farmed Animals Regulations (Northern Ireland) 2000, it is now proposed that that should be extended to all non-farmed animals, including domestic pets; that is an important change. It is proposed that not only will it be an offence to cause physical or mental suffering to an animal by a deliberate act but it will be an offence to fail to take steps to prevent unnecessary suffering to a protected animal — for example, by an omission of actions.

It is also proposed that it will be an offence for the person who is responsible for an animal to permit another person to cause unnecessary suffering, or for them to fail to prevent unnecessary suffering, and, to do so, it is proposed that other new offences will be introduced. It is currently an offence to carry out a prohibited procedure that interferes with the sensitive tissues or bone structure of an animal, other than those permitted through specific exemptions. One such exemption is the docking of dogs' tails by a veterinary surgeon, before their eyes are opened. It is now proposed to remove that exemption and make it an offence to dock dogs' tails, including working dogs. It is also proposed to make it an offence for someone to take an animal from Northern Ireland to a place outside Northern Ireland to have a prohibited procedure carried out.

It is also proposed that it will be an offence to administer a drug or substance that is otherwise harmless in a manner or quantity that has the effect of making it poisonous to an animal, or to administer an injurious drug or substance to an animal. It will also be an offence to abandon an

animal, whether that abandonment is permanent or temporary and irrespective of whether it causes unnecessary suffering.

Powers to deal with animal fighting will also be strengthened and new offences created. It is proposed that it will be offences for: causing an animal fight to occur; making or accepting a bet on an animal fight; training an animal to fight; recording, supplying or possessing any recordings of an animal fight without due reason; or possessing anything designed or adapted for use in an animal fight. If it proves to be necessary in the future, enabling powers will be sought to regulate, through subordinate legislation, the use of electronic training devices.

With respect to the promotion of animal welfare, the policy aim is to impose a duty on owners and keepers of animals to take reasonable steps to ensure the welfare of animals in their care. That is often termed a duty of care. It is an offence under the Welfare of Animals Act (Northern Ireland) 1972 to fail to exercise reasonable care and supervision to prevent unnecessary suffering to an animal. Furthermore, under the Welfare of Farmed Animals Regulations (Northern Ireland) 2000, as amended, an owner and/or the keeper of an animal must:

“take all reasonable steps to ensure the welfare of that animal, and ... ensure that it is not caused any unnecessary pain, suffering, injury or distress.”

That is the duty of care.

No equivalent powers exist under the 1972 Act with respect to non-farmed animals, and, to close the gap between farmed and non-farmed animals, it is proposed that it will be an offence if all reasonable steps are not taken to ensure that the needs of a protected animal are met to the extent required by good practice. To help to implement the duty of care, inspectors will be empowered to issue improvement notices if those requirements are not met. It will also be an offence to fail to comply with improvement notices. Under the Welfare of Farmed Animals Regulations (Northern Ireland) 2000, equivalent notices are already issued by DARD in respect of farmed animals.

As part of the promotion of welfare, the giving of an animal as a prize does not sit easily with the concept of a duty of care. Although a person under the age of 16 can look after an animal, the legal responsibility for that animal rests with the parent or guardian. Therefore, it is proposed to make it an offence to sell, or to give as a prize, an animal to a person under 16 years of age. It is not proposed to ban the giving of animals as prizes per se to people over 16 years of age.

The 1972 Act gives the Department the power to regulate the standards for keeping livestock on agricultural land and to prepare codes of practice for farmed animals. No similar powers exist for non-farmed animals. Therefore, it is proposed to seek enabling powers to make subordinate legislation to regulate for the keeping of non-farmed animals and to allow codes of recommendation to be prepared for non-farmed animals.

The 1972 Act makes it an offence to keep a pet shop, animal boarding, riding or zoological establishment without a licence from the Department. Some would argue that the current legislation is too narrow and does not cover the full range of activities involved in animals. Therefore, it is proposed to extend the current enabling power to prohibit the carrying out of activities involving animals without a licence or registration. To avoid the problems where the legislation narrowly defines the activities that require licensing, it is not proposed to detail specifically each activity that will be included. However, the activities that are likely to be dealt with in subordinate legislation will include dog-breeding establishments; greyhound tracks; circuses; and animal sanctuaries. Separate consultations will take place on those issues as they are progressed.

The new Bill also proposes to provide enabling powers to regulate, through subordinate legislation if that proves necessary, the keeping of certain wild animals as domestic pets.

As the new legislation seeks to provide protection for animals before they suffer, the policy intention is that there should be powers to allow animals to be looked after if they are suffering, or likely to suffer, if they remain where they are. Therefore, a range of powers in relation to animals in distress is proposed: an authorised officer who finds a protected animal suffering, or likely to suffer, can take steps to alleviate the animal's suffering; and an authorised officer can take a protected animal into his or her possession where a veterinary surgeon certifies that it is suffering, or likely to suffer, and, in an emergency, that can be done without a veterinary surgeon's certificate.

The new Bill proposes new powers to care for animals on the premises or at another place; new powers to remove an animal to a place of safety; powers to mark the animal to identify it; and a person will commit an offence if he or she intentionally objects to a person exercising

those powers. We are also proposing that a court can decide the future of the animal, which would include selling or destroying the animal.

Additional powers will also be sought to seize animals involved in fighting offences. Currently, the PSNI has powers to seize, as evidence, only an animal involved in a fighting offence; it cannot seize an animal on welfare grounds. New powers are proposed to seize, on welfare grounds, any animal involved in a fighting offence or any animal kept for use in an animal fight.

Currently, DARD has powers to enter agricultural land in respect of offences pertaining to livestock. The Department also has powers to enter pet shops, riding establishments, animal-boarding establishments and zoos. The PSNI has powers to enter all premises if it believes that an offence of cruelty or unnecessary suffering is being committed or has already been committed. There are no powers to enter premises to rescue animals that are likely to suffer.

To enforce the new powers in the proposed Bill in respect of non-farmed animals, and to prevent unnecessary suffering, new powers of entry are required. It is proposed that the Bill should provide new powers of entry and search, under warrant, in connection with its new provisions, such as the ones that relate to animals in distress that I mentioned. There will also be new powers of arrest for the police with regard to the prevention of harm to animals. In addition, there will be enabling powers to make subordinate legislation that allows other bodies to carry out enforcement actions on behalf of the Department. In areas where the Bill provides enforcement powers to make subordinate legislation at a later stage, any new subordinate legislation would be subject to full public consultation and scrutiny by the Committee.

Some view the current conviction penalties that a court can impose as too lenient. There have been calls for the inclusion of higher penalties in new legislation to provide a greater deterrent for some offences. Therefore, it is proposed that the maximum penalty for cruelty should be increased from three months in prison and a fine of £5,000 to a maximum term of 51 weeks' imprisonment or a fine of up to £20,000, or both. There have also been suggestions that current legislation makes it easy to circumvent disqualification orders imposed by the courts, because the custody of an animal can nominally be transferred to a third party. In such cases, the disqualified person remains in control of the animal.

To combat that, it is proposed that the courts will have the power to issue a seizure order, which will deprive the person in question of possession or ownership of an animal and specify its disposal. The courts will have the power to disqualify a person from owning animals; keeping animals; participating in the keeping of animals; and controlling or influencing how animals are kept. It is proposed that the courts will also be able to order the destruction of an animal if they feel that it is in the animal's best interests. The courts will also be able to order the seizure of equipment used in offences, cancel any licence and disqualify any person from holding a licence.

That is a summary of the main provisions that we propose to include in the Bill. Colette will summarise the benefits and advise the Committee of the next steps.

Ms McMaster:

Existing animal welfare legislation has been in place in Northern Ireland since 1972, so it needs to be updated to reflect the standards of animal welfare that are expected today. Kate outlined the various powers that we are proposing for inclusion in the Bill, and I will highlight the key ones.

The proposed Bill will close the gap between the existing protection for farmed and non-farmed animals by setting out obligations for people to promote the welfare of all vertebrate animals, including domestic pets for which they are responsible. That will help to prevent cruelty to all animals and will clarify that responsibility for an animal will include permanent or temporary ownership and includes owning, managing or in any way keeping an animal. It will provide powers to protect animals that are likely to suffer in addition to those that are suffering or have suffered. It will provide stronger penalties and enforcement powers to deter cruelty and will provide enabling powers that will allow for legislation to be updated to deal with new or changing issues.

That outlines DARD's thinking on the policy proposals to be included in the new Bill. We want to take Committee members' questions and comments today. If members have any further comments that they want to make after today, we would be grateful if they could be forwarded quickly, because it would help us to keep to our timescale for moving the Bill forward in the next week. After that, the next step is to advise the Minister of the Committee's views and those

submitted by stakeholders, which will be with us in writing by the end of the week. We then propose to finalise the policy proposals and begin to draft the Bill. This is the first in a series of engagements with the Committee. We plan to come back on 13 October, and we hope to be able to update you further at that time.

The Chairperson:

Thank you very much for taking us through the proposed Bill. The only way that it will get through the House on such a tight timescale is if we get agreement on the scope of the Bill and on what it should do. There will be much work to do to try to get that right, and much toing and froing. Given that timescale, if we get into a huge dispute about what is involved, the Bill will not get through the House in time. Therefore, we need to work very quickly and closely together to shape the Bill in the right way.

I have a couple of brief questions that deal with the scope of the Bill on the issue of suffering. Is the phrase “conditions where an animal is likely to suffer” to be included in the Bill, or is the point of action only when an animal actually suffers? For example, if someone sees a dog locked in a car on a hot day, but the dog is not suffering, that person may believe that the dog is likely to suffer if it is locked in the car for much longer. At what point can an officer take action? When will those powers take effect? Is it at the point of suffering or the point at which someone suspects that there might be suffering? That will determine the extent of the power. The same logic would apply if someone sees a tethered horse at the side of the road. At what point is that animal suffering? When does that become a genuine complaint about an animal that is likely to suffer, and not a nuisance complaint from someone who objects to the animal being there?

Ms Davey:

The new power that we are introducing extends beyond when an animal suffers; it gives us the power to take action to prevent unnecessary suffering. Take the example of the dog in the car: the dog is likely to suffer if it remains in the car. The Bill will give us the power to take action a long time before the dog is lying there taking its last breath after being half cooked.

It would be exceptionally difficult to specify exactly every occasion on which those powers can be used. There are judgement calls to be made on each specific occasion, and there will be veterinary judgements to be made. However, we need to be clear that one of the benefits of the Bill is that we can take action to prevent unnecessary suffering. We do not have to wait until that

suffering happens.

The Chairperson:

Who will be in charge of making that decision? Does it have to be one of your appointed officers who patrols and implements that? Can a complaint come from a police officer or a member of the public? Where does the monitoring or enforcement of those powers come from?

Mr John Terrington (Department of Agriculture and Rural Development):

The powers under discussion already exist for farmed animals, and the Department's vets have responsibility for dealing with those powers. Currently, the only other enforcement agency beyond that are the police. We recognise that the police have priorities. However, there is a separate power set out in the proposals that Kate outlined that suggests that we consider whether there are other agencies or organisations that could take those powers on board. We will consult on that in due course.

The Chairperson:

Kate mentioned animals being given as prizes and sold to people under the age of 16. At traditional fairs in Northern Ireland — for example, the Lammas Fair or Ballyclare May Day Fair — animals such as goldfish are regularly given as prizes, or there may be an auction by an unlicensed horse dealer. Does that come under the scope of the Bill?

Ms Davey:

Under the scope of the Bill, we are proposing that no animal can be given as a prize or sold to a person under the age of 16. That includes goldfish.

The Chairperson:

Do proposals such as that potentially leave the legislation open to ridicule and the suggestion that it is going too far, or is that not the view that you are hearing from stakeholders?

Ms Davey:

It is about trying to get the balance right. The stakeholders at the meeting on 17 September, for example, were in favour of a total ban on animals being given as prizes not just to people under 16 years of age. They do not think that the Department is going too far by saying that a child under 16 years of age cannot win a goldfish. Those stakeholders would like us to go further. It

is important to achieve a balance, without being a regulatory authority and stating that people cannot look after an animal if they are given it as a prize. We are saying that, by setting the age at 16, should a person get an animal as a prize, he or she should be able to make a judgement call: first, to accept the prize; and, secondly, to decide whether he or she is capable of looking after that animal. That is why we have tried to enable that judgement call.

The Chairperson:

There will be issues on which we will want to come back to you. I know that you want to be informed about those matters very quickly, and we intend to have a fluid delivery of information from members back to the Department so that you can shape the proposals as expeditiously as possible.

Mr Elliott:

You mentioned subordinate legislation on powers of entry and enforcement in answer to the Chairman. What are your thoughts on that? I am trying to broaden the issue because, when we make primary legislation, we want to consider subordinate legislation also. The licensing and registration of activities is another issue. What does the Department plan to do? One possibility is to give more powers on the registration process to local councils. Is that your intention, or are you thinking of keeping that process in the Department or giving those powers to an outside body?

Ms McMaster:

I will answer the question about enforcement responsibilities, and others can add to it. In the consultation proposal, the Department specifically proposed a greater role for local councils, particularly in respect of licensing or registering activities involving animals. There was a fairly mixed response to that proposal. Half the responses received were in favour of the proposal and half were not. Some of those who were against the proposal to give a greater role to local councils recommended that the enforcement responsibility should remain with central government. Others suggested that other bodies should be considered for having a role in enforcement.

In light of those comments, the Department is not being prescriptive, at this stage, as to whether it would give a role to other bodies. There will be continuing powers for the Department

in relation to farmed animals and the policing of other circumstances, but, rather than be prescriptive, we want the opportunity to explore the issue further with other bodies and to consider whether it would be effective to engage with them. Enabling powers allow the Department to explore that issue in more depth and to consult with other bodies that may have a role in the future. We are not being prescriptive, and we have no firm ideas about that. We have not ruled anything in or out.

Mr Terrington:

The second point concerned the licensing of other activities. As Kate and Colette said, the current rules on what can be licensed are fairly limited, and they sit with the Department. If there is potential to extend the sort of activities that need licensing, that have powers of inspection, and so on, there is a job of work to consult widely on what that would mean and who would do it. The two issues dovetail, in that any new licensing powers would be considered in light of any enforcement powers.

Dr W McCrea:

There is no doubt that there is much in this legislation that strikes a chord in my heart and with which I am in wholehearted agreement. It is absolutely disgraceful that anyone should be allowed to get away with inflicting suffering and cruelty on animals. There can be no justification for it. We have seen some very sad pictures on television showing animals — little dogs, donkeys and horses — rescued from absolute cruelty and from starving to death.

There is a great need for a suitable animal welfare Bill. However, I must warn against going from the sublime to the ridiculous. As a lad, I was reared on a farm, and I had a dog all my life. I was under 16 years of age, but I loved that dog and cared for it. I had my first dog for 13 years, and it was very precious to me. I was given that dog. To tell me that I could not be given a gift of a dog because I was under 16 years of age is absolutely ridiculous. The Department should wise up and go for real offenders, irrespective of age. Parental responsibility should come into it.

Colette, you cited stakeholders' views and said that stakeholders wanted the proposals to go further. Who are those stakeholders? I want to know their names. I want to see whether they represent me or whether they have some other agenda.

The Chairperson:

All the stakeholders' information is in the document.

Dr W McCrea:

That is grand. We need to know exactly who they are. To suggest that all the stakeholders wanted to go further is ridiculous.

The phrase "to prevent unnecessary suffering" also requires a judgement call. An official may come around from the Department and say, "That dog is too fat" — I am sorry for pointing at the Committee Clerk; that was accidental.

[Laughter].

I will point elsewhere. An official could claim that a dog is too fat and is suffering unnecessarily. Again, the Department must wise up. The judgement of officials could give rise to concern, so careful judgement is called for. As regards the distress involved in removing an animal, we need to know who looks after it. Does licensing and looking after the animal become the duty of the local council? If you give power to the councils to do that, will you provide finance for the councils to do the job, or is this to be paid for by ratepayers? Are you giving more powers without giving more money? As a councillor for 36 years, I assure you that that is totally unacceptable.

You talked about a maximum fine of £20,000. What about setting a minimum penalty? I am fed up with the way in which the courts set fines. It seems to me that they are too lenient with people. Fines are minimal rather than at the maximal. It sounds good to give a maximum of 51 weeks' imprisonment or a £20,000 fine. Why not set a minimal figure to ensure that an offender gets imprisonment or an effective fine for certain offences. Without that, for behaviour deemed not acceptable by the community in general, the courts will give only a crack on the fingers or a slap on the wrist. That is unacceptable to the community.

The Chairperson:

The issue about the power of councils has been raised; will you have a conversation with the Minister of the Environment about the review of public administration and about the new powers that he will introduce? He is introducing measures to deal with leylandii trees and to create

powers for the new council structure that will allow the police to deal with those issues. I do not know whether you have discussed those issues with the Department of the Environment.

Ms Davey:

Yes; we have already spoken to the respective officials in the Department of the Environment and will continue to do so. As John said, we are not saying, at this point, that councils will receive specific new powers. We might decide to grant subordinate powers. However, we have engaged with the Department of the Environment and will continue to do so, particularly if we take the road of subordinate legislation and give welfare powers to councils for the first time. I can assure the Committee about that.

The Chairperson:

I am sorry; I interrupted you earlier. Perhaps you could respond to members' comments.

Ms McMaster:

During the consultation, we considered the issue of the transfer of animals. Although a person under the age of 16 could look after an animal, the legal responsibility for the animal will rest with the parent. That is the principle behind the idea, not that a child cannot have a family pet. Under the legislation, legal responsibility will rest with the parent.

We received a range of comments about the age limit for the transfer of animals by sale or prize. Some comments supported the proposal, and others did not. At the stakeholder workshop, further comments were made and more may arrive with the Department. The current policy position is that we will introduce proposals to ban the transfer of animals by sale or prize to persons under the age of 16. We will take account of, and reflect on, any comments before we finalise the policy proposals.

Mr Terrington:

The proposal was never intended to prevent a parent from giving a pet to a child. In such situations, the decision on responsibility is taken in advance. It is about handing a goldfish or another animal to a kid and allowing him or her to walk away without considering how to look after the animal.

Ms McMaster:

Paddy can perhaps comment on how we will make a decision to take action if an animal is suffering.

Mr Paddy McGuckian (Department of Agriculture and Rural Development):

Under the Welfare of Farmed Animals Regulations (Northern Ireland) 2000, qualified veterinarians can make a judgement in a situation where they feel that animals are being kept in a way that is likely to cause suffering. That process will not be carried out by a random official but by a qualified veterinarian who understands the legislation and makes a judgement on the basis of his or her experience and training over a number of years. That system works well in a farm setting and often alleviates suffering. It is almost a shot across the bows to tell the keeper that, although his animals are not suffering now, he is keeping them in a way that is, in the Department's opinion, likely to cause suffering. We ask him to fix that.

In our experience, herd keepers often welcome that approach. They benefit from an improvement notice, because they use their husbandry to make alterations and corrections that sort the problem out. Of course, some people do not listen, and it is an offence to not comply with an improvement notice. We envisage that we will use the same tactic for companion animals, such as dogs, that are being kept in a situation that is likely to cause suffering.

That is where the gap exists in legislation. There is no description of unnecessary suffering in legislation. If I were a departmental veterinarian bringing a case to court, the magistrate has to decide if it was unnecessary suffering. I can argue my case, but the judgement is made by the court. From a veterinarian's point of view, that is a strange arrangement, but that is the way that it has been done for a long time, and it works.

Dr W McCrea:

There is something in the back of my mind about such a case in which they said that they would take a dog off a pensioner. The dog was her only friend. She was told that she was too good to the dog and was causing it unnecessary suffering by allowing it to become too fat. It was enough to put the old lady over the edge.

Mr McGuckian:

We have been talking about companion animals. In the area of livestock, there are codes of recommendations about how animals should be kept. It involves making people aware of those codes of recommendations, and it is a form of giving advice to people. People end up before a court if they fail to do what is required in the improvement notice. Therefore, we are aiming to improve the situation. It is not a matter of someone going out and removing a dog from the person on the spot, unless we are in seizure situations and serious situations.

Mr Savage:

I am sorry that I missed part of the meeting, but I had to go downstairs. I am concerned about the docking of tails. What is the difference between docking a dog's tail and docking the tail from a young piglet? As you said, such things can happen to young animals before they open their eyes.

Ms Davey:

You have to look at the reasons why the tails are being docked. In many cases, dogs' tails are docked because they look better with docked tails. There is an argument that working dogs' tails are docked because they may get hurt in later life. The research that we examined indicates that such a small number of working dogs' tails are injured in later life that it does not justify causing the unnecessary suffering to every young pup just in case it gets its tail hurt later. That is unnecessary suffering.

I will leave it to Paddy to explain why there is a difference between dogs' tails and pigs' tails or lambs' tails being docked.

Mr Savage:

I am well aware of why it is done because I am a farmer, and I declare an interest as such. I cannot see what the difference in pain experienced by the animal would be. I have docked many tails, and the level of pain depends on the machine that is being used.

Mr McGuckian:

The legislation reflects exactly what you are saying, Mr Savage. The Welfare of Farmed Animals Regulations (Northern Ireland) 2000, as amended, relates to pigs. It discourages the docking of pigs' tails, because a pig's tail is an appendage with sensitive tissue. It is well

recognised in Europe that the docking of pigs' tails should not be allowed. That is covered in legislation. The area that is not covered here is the docking of dogs' tails, and that is why we are moving to make the change.

Mr Savage:

How can we assume that it is more painful for one animal than another?

Mr McGuckian:

I do not think that we are assuming that.

Mr Savage:

People would not be doing it unless they had a reason to do it.

Mr McGuckian:

The assumption is that removing an animal's appendage is no different from my cutting off your wee finger.

Mr Savage:

There is a difference.

Mr Shannon:

People need their wee fingers.

Mr McGuckian:

There is no difference. Animals are regarded as sentient beings; they have feelings. The science that we are working with states that an animal experiences great pain when an appendage is removed.

Mr Savage:

If that is done professionally, there is no difference in the level of pain. We are grasping at straws and making a mountain out of a molehill.

Mr McGuckian:

The British Veterinary Association and the Royal College of Veterinary Surgeons, of which I am a member, would take disciplinary action against me for docking a dog's tail in a manner that is outside the law as it currently stands. It is the strongly held opinion of the veterinary profession that the removal of an appendage, such as a dog's tail, does not need to be done. It is avoidable. Those terms are important in animal welfare. We are talking about avoidable pain and distress. That is why we included that proposal.

Mr Savage:

Does the reference to electric shock devices include electric fences or anything similar?

Ms Davey:

We are seeking the power to make subordinate legislation in the future should it prove necessary. The reference is to electronic training devices, not electric fences or anything like that. We are not stating that we will ban such devices. However, should further consideration of the issue be required in the future, the necessary enabling powers would be contained in the primary legislation. If, at that stage, action is proven to be necessary, we can put forward a range of proposals that would first go out to public consultation and be presented to the Committee for scrutiny. No specific proposals exist at present.

Mr W Clarke:

I am sorry that I had to nip out of the room.

I am sorry if the subject of my question has already been covered. If similar regulations on docking tails do not apply in the South, people could, in practice, buy a dog from just over the border.

Secondly, will you give the Committee a breakdown of the differences between our proposed legislation and the legislation that applies in Scotland, England and Wales?

The Chairperson:

Will you provide the Committee with a table that illustrates the differences?

Ms Davey:

Certainly, and, if it helps the Committee at this stage, I will quickly summarise the differences now.

Animal welfare legislation in the South is being reviewed, and no decision on the docking of dogs' tails has been made. That is why we suggest that it also be an offence to take an animal from the North to the South for that procedure. Otherwise, that would be an easy way out.

If, for example, the South does not ban the docking of tails, it will remain legal for someone to buy a dog with a docked tail there and bring it to the North. However, the buyer would have to confirm that the dog had been bought in the South. We are aware of that issue.

The new legislation that has been introduced in Scotland is exactly the same as that which is being proposed in Northern Ireland. The legislation in England and Wales is slightly different in that England has banned the docking of tails but has allowed working dogs to be exempted. We will summarise the differences in a table for the Committee.

Mr Shannon:

I have not been a member of the Committee for long, but I want to comment on a couple of issues. At one stage, the only thing missing from Willie McCrea's contribution was a rendition of 'Old Shep'. I was waiting for him to break into song and take us on a trip down memory lane.

The Chairperson:

You are only saying that because he has left the room, but the meeting is being covered by Hansard staff.

Mr Shannon:

I was hoping that he might break into Del Boy's favourite song, but that is by the way.

The Chairperson:

You have gone to the dogs.

Mr Shannon:

It seems a wee bit ludicrous to impose such a restriction on the purchase of pets. I understand that you said that even family members would be affected: is that correct?

Ms Davey:

We said that there is nothing to stop a family from owning a dog and children calling that dog “their” dog. However, the legal responsibility rests with the adult. This concerns someone selling an animal, or giving it as a prize, to a child under 16 years of age. We appreciate the comments, but we are trying to get the balance right so that the animal is protected. If a 14-year-old wins an animal at a fair, comes home, and the parents say that they do not want it, what happens to that animal?

The Chairperson:

Take this example: a child under 16 years of age finds a bag of puppies or kittens in the countryside and rescues them: they have not been won or purchased. They fall into the hands of the child, who decides to look after and maintain them. Who, in your opinion, is responsible? Is it the child?

Ms Davey:

If it is a young child, the parents are responsible. The child will bring those animals home, and he or she will have to get the parents’ agreement to keep the animals. Therefore, there is an agreement —

The Chairperson:

You do not keep the cat; the cat keeps you. What if they decide to keep the kittens outside and rear them as outdoor animals?

Ms Davey:

In practical terms, the animals have to be fed. They are domestic animals. Children will bring an animal home and get their parents’ agreement to keep and look after the animal. The animal has not been sold to them, and they not been given it as a prize. However, until the child is over 16 years of age, the responsibility for that animal rests with the parent or guardians.

The Chairperson:

Technically, that animal is a stray.

Ms Davey:

The parents have taken temporary responsibility for the animal. The legislation concerns animals that are owned permanently or temporarily. Therefore, the animal is under the control of man.

Mr Shannon:

I turn to question 6 in the consultation paper:

“Do you agree there should be an extension of legislation restricting the docking of dogs’ tails?”

How did the Department arrive at the recommendation that there should be an extension to the legislation for docking dogs’ tails? Would it not have been more logical to have an exemption for working dogs. I had a cursory look through the consultation replies. I am not for one second decrying any person’s response to the questions, but, in the tally of those who responded, 32 did not want legislative change and 46 did.

That is only one part of the process. Again, I am not for one second decrying the responses of those who said that there should be an extension to the legislation — it is good of people to take the time to respond — but should the New Life Parrot Rescue and helpline service, with respect, really be the people on whom we should base an opinion on tail docking? The badger group is very worthwhile and does a tremendous job, but is it the group to ask about docking?

The Chairperson:

May I say this, Jim: anyone is entitled —

Mr Shannon:

Absolutely.

The Chairperson:

It is an open consultation, and anyone is entitled to respond, and those groups have taken the time to respond to the consultation. You should say that they do not have a right.

Mr Shannon:

I have not said that they should not have a right; I said that they should have a right. If you would let me finish, please, I am trying to draw comparisons in relation to the number of people who replied. The people who replied that there should be no legislative change are people who are involved with working dogs. I looked down the list of respondents. I do not know the names of all the individuals, but the organisations on that list indicate that they are people who are involved with working dogs. It might have been better for the Department to have fully considered the responses from all the knowledgeable groups and individuals, but they were outweighed by those who wanted change.

The Chairperson:

The Department will probably solicit information directly from the main groups. An open consultation will invite everyone to come forward. That is a normal process.

Mr Shannon:

I think that there should be an exception for working dogs, similar to that which has existed over the years across the water. I am not directly involved with such animals, but I know people who have had their dogs' tails docked. I am aware of people from organisations who have working dogs, and they, religiously and honestly, say that they do not want any legislative change. It worries me that the Department seems to have ignored that. I will seek legislative exceptions similar to those across the water. I am not decrying any groups.

The Chairperson:

I know that you are not.

Mr Shannon:

There are lots of experts.

The Chairperson:

I know that you are not decrying any groups, but I am always concerned that, if people have been diligent and decided to respond, even if they do not have a sectoral interest, their views must be considered because they have been expressed. You are right: the way in which those views are calibrated is important. I would not like the impression to be created that their views are not

relevant, but I know that you were not trying to create that impression. It is important that people are consulted.

Ms Davey:

On receipt of consultation responses, we do not look at only the numbers and decide that the majority wants one thing, the minority wants another, and jump for the majority. That was not the case on this issue. The advice on which we are working came from the Royal College of Veterinary Surgeons and our vets. They say that that docking a dog's tail causes unnecessary suffering. It is unnecessary to dock a dog's tail purely for the appearance of the dog.

With regard to whether there should be exemptions for working dogs, the evidence available suggests that a small number of working dogs have tail injuries. An argument is used that working dogs' tails are docked to prevent injury, but the evidence does not support that. More domestic pets incur tail injuries by having their tails closed in the door. You are suggesting that every working dog should suffer unnecessarily just in case it has a tail injury later in its life. That is unnecessary suffering; it is not needed to allow a dog to live.

Mr Shannon:

We are going to have to disagree on this. People who have contacted me have a different opinion from the opinion that has just been expressed. It would be remiss of me to sit here and not to make my opinion heard. The evidence that I have is clear, and it states that there is not an issue. The reason why we have not seen problems with dogs' tails in the circles in which I move is that they have been docked. What we are talking about here is change. I assume that the officials across the water took advice from the same veterinary groups, and so forth, that Ms Davey mentioned, and they decided that there should be an exemption for working dogs. Why should Northern Ireland be treated differently from the mainland? I know that there have been changes in Scotland, but I am talking about the mainland.

Ms Davey:

We would welcome any evidence from members, because we are examining this process. The issue was raised at our stakeholder meeting on 17 September, and the stakeholders wanted to put forward further evidence, so we are awaiting that.

The Chairperson:

Have you closed your minds on this issue?

Ms Davey:

No; these are proposals. We want evidence.

Mr Irwin:

I want legislation that deals with people who are cruel to animals. There is no doubt that there are people who have no respect for animals and cause them to suffer. Loopholes need to be closed.

For example, a farmer can be cruel to his animals, and when is he prosecuted in court and told to stop keeping animals, he can simply switch the herd to his wife's name and continue to keep those animals. There must be some way to deal with that. I know that that may be difficult, but there are such occurrences. The Department's plan to dock dogs' tails seems to be a minor issue by comparison. In fact, dogs' tails have been docked for generations, and, if they are docked properly by a vet, the dog does not suffer.

The officials clarified the situation with respect to the proposals for children under 16 years of age keeping pets, and the Committee is now aware that they will still be able to keep them, but that it will be illegal for them to buy animals or to receive animals as a prize. That clarification was helpful, because that proposal would have been very hard to police, and it would have been totally silly to try to stop children keeping pets. It is important that the loopholes that allow those who are cruel to animals to continue to keep animals in another name after being prosecuted are examined.

Ms Davey:

The Department endorses the comments that the member has just made, and the last set of powers that I detailed in my presentation are aimed at trying to close the loophole that he has described. However, we must also be mindful that, when the Department is drawing up the proposed legislation, it must also take account of other legislation such as human rights legislation.

Mr McGlone:

I compliment the witnesses for their work in framing the proposed legislation, because it is a fine and principled piece of work. However, I am concerned with some finer points and the practical outworkings of the proposed legislation. For example, the offence of animal abandonment will be hard to police; William McCrea touched on that issue earlier. Who will investigate such a situation? It has happened outside my own house that wee kittens have been thrown out of a car, a wee pup has been dumped over a ditch or a dog that was a Christmas present has been dumped on the road. We all know what will happen. I will ring the police and say, "Someone has just dumped some kittens out of a black or white car." The police will reply, "Aye surely, Patsy. But we have boys beating one another up and down the street, there's a car smash five miles out the road, and a house has just been broken into." That injection of reality must come into play, as must how those offences can be investigated by the PSNI when it is under-resourced and overstretched. Furthermore, if those crimes cannot be investigated by the police, that brings us to the second alternative, which is whether some sleight of hand is being used, under the review of public administration, to transfer the responsibility for investigating those offences to local authorities, without the necessary provision of resources. That would be difficult, given the pressures and concerns of ratepayers in the current credit crunch.

Ms Davey mentioned the requirement to regulate the keeping of non-farmed animals. Forgive my ignorance on that point, but will you clarify and expand on what that will mean in practice?

Ms McMaster:

With respect to the comments that the member has made about practicality, the Department wants to ensure that, when it comes to the outworkings of the proposed legislation, it is effective and can be operated effectively in practice. Those are important issues, which have also been raised by other stakeholders, and the Department has taken them on board.

As Kate said, the Department has already established contact with the Department of the Environment (DOE) on the potential involvement of councils, if that were considered appropriate, and it has also made contact with the relevant personnel in the police. Ongoing discussions will continue with those bodies to make the proposed legislation work effectively.

At this stage, it is not intended to transfer powers of prosecution to the councils by sleight of

hand. The decision on what body will prosecute offenders has not yet been made. If powers of prosecution are transferred, communication and contact with the councils will be needed, and there will be resourcing issues in the councils that would need to be resolved.

Mr McGlone:

You said that you are taking those matters on board and that you have initiated conversations with the police and the DOE. Can we be privy to some of the content or direction of those conversations?

Ms McMaster:

We are at the start of the process. We initiated it, and we intend to take it forward as the Bill moves through its various stages. What authorised bodies will be involved in the powers that enable the subordinate legislation will be subject to the development of further proposals. To an extent, that is downstream from the powers that —

Mr McGlone:

Perhaps my question was not clear enough. What was the content and detail of your discussions with the DOE and the police?

Ms McMaster:

We will keep the Committee updated on the contacts —

Mr McGlone:

Perhaps you are not aware of that detail.

Ms Davey:

As Colette said at the outset, I recently took over leadership of the Bill team. I made those contacts and informed the DOE and the police of exactly where we are in the process. I have set up meetings to take the matter forward. Those intense meetings have yet to happen, but they are in the diaries. We will update the Committee when the meetings happen.

Mr McGlone:

My other question concerned regulation.

Ms Davey:

We mentioned regulation and codes of practice, which are already in place for farmed animals. We suggest that there should be enabling primary powers to allow us to have such regulation for non-farmed animals. We have no specific codes or regulations in mind for non-farmed animals, but it may be helpful if Paddy outlines the regulations for farmed animals. I must emphasise that we have no specific codes in mind, but that power would allow us to have regulation if it became necessary in the future.

Mr McGlone:

I am trying to get my head around what it means to regulate the keeping of non-farmed animals. How does that work in practice, and what are the implications for people who have non-farmed animals?

Ms Davey:

There are no implications yet, because we will get the high-level power only if we go down this road. Firm guidelines would clearly set out the detail and implications of the proposal. Those would be consulted on fully as part subordinate legislation and subject to the Committee's full scrutiny.

Mr McGlone:

Basically, it is a concept that as yet has no detail.

Ms Davey:

Yes; we are seeking only an enabling power to allow us to do that in the future if it proves necessary. There is no specific proposal that is sitting half-baked and waiting to be brought forward. However, regulations and codes of practice for farmed animals are already in force. The regulations on non-farmed animals could be along those lines, but we are not thinking of issuing codes of practice on how someone should keep a cat. We are looking at realistic measures. As Paddy explained earlier, farmers regard the codes of practice as helpful advice. We hope that the codes of practice for non-farmed animals will also be regarded as helpful advice should they ever materialise.

The Chairperson:

That ends the evidence session. I appreciate the departmental officials coming here and providing us with their views. We will give you more information as it arises; I encourage members to speak to the Committee Clerk so that information can be given to the Department as quickly as possible. Much work has to be done to get this right, but it is fairly clear where it is headed. We must make sure that we get past the areas of difficulty and difference quite quickly. I do not think that the difficulties are massive, to be honest with you. What I have heard today suggests that there has been a fairly good response.

Ms McMaster:

Thank you.

The Chairperson:

Thanks to Colette, Kate, John and Paddy.